IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

WEDNESDAY, THE 7TH FEBRUARY 2007 / 18TH MAGHA 1928

Crl.MC.No. 301 of 2007()

CC.1048/2005 of JUDL. MAGISTRATE OF FIRST CLASS COURT-I, THRISSUR

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PETITIONER:

SANTHOSH P.K., S./O.KESAVAN, AGED 40 YEARS,
PALLITHARA HOUSE, KAIPAMANGALAM,
P.O. CHALINGAD, THRISSUR.

BY ADV. SRI.SHOBY K.FRANCIS

RESPONDENTS:

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1. STATE OF KERALA REPRESENTED BY
PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

2. SRI. RAM INVESTMENT LTD.,
I STFLOOR, ARAFA TOWER,
VELIYANNUR ROAD, TRICHUR-21,
REPRESENTED BY ITS MANAGER.

BY PUBLIC PROSECUTOR SRI.SU NAZER

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 07/02/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

Crl.M.C.No.301 of 2007

Dated this the 7th day of February 2007

O R D E R

The petitioner is the accused in a prosecution under Section 138 of the Negotiable Instruments Act. The prosecution is in relation to a cheque allegedly issued by the petitioner for the discharge of a liability in respect of the outstanding instalments in a hire purchase transaction. The said cheque was presented and dishonoured on 28/01/2003. The prosecution is in progress. Long later, on 20/11/2003 because of the outstanding liability which had accrued thereafter also, the seizure of the vehicle has been effected. The vehicle allegedly has been sold and proceeds adjusted to the liability of the petitioner.

2. The petitioner has come to this court with the prayer that the directions under Section 482 Cr.P.C may be issued to quash the proceedings against him. What is the reason? According to the petitioner since the vehicle itself having been seized by the complainant, continuing the prosecution amounts to failure/miscarriage of justice. This must persuade the court to invoke the powers under Section 482 Cr.P.C, it is prayed.

3. I am unable to agree, even the subsequent discharge of the liability of the amount due under the cheque will not absolve the culpable liability of the accused. It may weigh with the court in deciding the nature of punishment. But, at any rate, subsequent payment after commencement of the prosecution cannot ipso facto absolve the indictee of the liability to face trial. The prayer for quashing of the proceedings is thus found to be without any merit. The challenge must hence fail.

4. The petitioner had once appeared before the learned Magistrate but consequent to his failure/inability to appear, a warrant of arrest has been issued to the petitioner by the learned Magistrate. Proceedings has been initiated against the surety also, it is submitted. It is for the petitioner and his surety to appear before the learned Magistrate and explain to the learned Magistrate, the circumstances under which he could not earlier appear before the learned Magistrate.

5. I find absolutely no reason to assume that the learned Magistrate wound not consider the application for bail to be filed by the petitioner on merits, in accordance with law and expeditiously. Every court must do the same. No special or

specific directions appear to be necessary. Sufficient general directions have been issued in Alice George vs. Deputy Superintendent of Police [2003(1)KLT 339].

6. In the result, this Crl.M.C is dismissed but with the specific observation that if the petitioner surrenders before the learned Magistrate and applies for bail, after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits, in accordance with law and expeditiously - on the date of surrender itself unless there are compelling reasons.

R.BASANT, JUDGE)

jsr

R.BASANT, J

C.R.R.P.No.

ORDER

21ST DAY OF JULY 2006